

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the matter of Southwestern Bell )  
Telephone, L.P. d/b/a AT&T Missouri's )  
Revision to its General Exchange Tariff, )  
PSC Mo.-No. 345 Regarding Provision of )  
811 Service )

Case No. IT-2007-0187  
Tariff No. JI-2007-0260

**STAFF'S BRIEF**

COMES NOW the Staff of the Public Service Commission, and states:

In this case, the Commission must make a decision in the grey area between two certainties. The first certainty: it is clear that the Commission has the legal authority to approve Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri's proposed tariff sheets containing a charge for the service of providing 811 dialing. The second certainty: it is equally clear that the Commission cannot mandate Missouri One-Call System, Inc. ("MOCS") subscribe to the 811 service.

In between these two points of agreement among the parties, the Commission has two options. Should it prefer, the Commission could approve AT&T Missouri's tariff sheets or permit them to go into effect as a matter of law, and permit AT&T Missouri to obtain a charge to cover costs of implementing 811 – but as a result, there may be no 811 service for AT&T Missouri's customers in AT&T Missouri's service territory because the Commission cannot mandate that MOCS subscribe to the service and MOCS has indicated it will decline to subscribe if the charge is implemented. Alternatively, the Commission can decline to approve AT&T Missouri's tariff sheets – in which case, MOCS will subscribe to the service and AT&T Missouri

will be unable to directly recover any cost of 811 deployment from the entity whose members will benefit from the service.

**1. The Commission has the legal authority to approve the tariff sheets.**

The Federal Communications Commission addressed the issue of cost recovery as it pertains to 811 implementation in its Sixth Report and Order, stating that “[w]e therefore delegate authority to the state commissions, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of 811.”<sup>1</sup> In its Final Regulatory Flexibility Analysis appended to the Sixth Report and Order, the FCC elaborated:

39. While we recognize that there may be some costs associated with implementation of the 811 code, we have not specified parameters for cost recovery in this *Order*. The Pipeline Safety Act did not provide for federal financial support as part of the mandate for a nationwide abbreviated dialing arrangement for access to One Call Centers. Therefore, we find that the Congressional mandate and benefits of a national N11 code assignment, specifically 811, outweigh any concerns regarding cost recovery on the federal level. ***These issues are most appropriately addressed by the state and local governments.*** As indicated above, we believe that state commissions are in the best position to addressing issues associated with implementing 811 because many of the One Call Centers were developed by, or under the auspices of, the state commissions. (footnotes eliminated)(emphasis supplied)<sup>2</sup>

Accordingly, the FCC has explicitly stated that the decision on how to address cost recovery rests with state commissions such as this Commission to determine. The FCC mandated that 811 be implemented by April 2007.

The FCC has “delegate[d] authority to the states, pursuant to section 251(e), to address the technical and operational issues associated with the implementation of the 811 code.” Sixth Report and Order at para 2; also see para. 35. The FCC has decreed that the “811 abbreviated dialing code shall be deployed ubiquitously by carriers throughout the United States for use by

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<sup>1</sup> Sixth Report and Order, *In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105 (adopted March 10, 2005), para. 35.

<sup>2</sup> *Id.*, appendix B, para. 39.

all telecommunications carriers, including wireline, wireless, and payphone service providers that provide access to state One Call Centers.” *Id* at para. 4.

All of the parties agree that AT&T Missouri, as an incumbent local exchange carrier, has the obligation under the FCC’s order to deploy the systems necessary for 811 to function.

The FCC has also recognized that “there may be some costs associated with implementation of the 811 code” but did not specify parameters for cost recovery in its Order. Sixth Report and Order, Appendix B (Final Regulatory Flexibility Analysis), para. 39. AT&T Missouri is a price-cap company, and under Section 392.245, RSMo. (Supp. 2006), such a carrier may propose new telecommunications services (such as 811 service) and establish the price for such new services at the rate of its choice. In keeping with this principle, AT&T Missouri may submit tariff sheets that include charges to recover the cost of implementing 811 service, and Staff has no objection to the tariff sheets submitted in this case. Even should MOCS choose not to take that service, AT&T Missouri still must comply with the FCC mandate to deploy (para. 4), implement (para. 32), or otherwise “prepare the network” (para. 30) for 811 service by installing the required infrastructure.

**2. The Commission has no authority to direct MOCS to subscribe to 811 service.**

The Commission does not have the authority to require Missouri One Call System to take 811 service. MOCS serves as the statutorily designated “notification center” under the provisions of Section 319.015(4) RSMo. (Supp. 2006). It is not a telecommunications company as that term is defined by Section 386.020(51) RSMo. (Supp. 2006), nor is it a public utility under Section 386.020(42) RSMo. (Supp. 2006), and it does not provide telecommunications services or own telecommunications facilities. Thus, it does not fall within the scope of

Commission jurisdiction under Section 386.250(2) RSMo. (2000) and the Commission cannot direct it to subscribe to 811 service.

**3. The Commission should approve the tariff sheets.**

Staff has no objection to the tariff sheets. In prior filings involving 211, 311, 511 and 911 implementation, the Commission has permitted tariff sheets to go into effect that placed the burden to pay the implementation costs on the entity providing the service that corresponds to the N11 number, not on the telecommunications company. The Commission's rule at 4 CSR 240-32.200(2)(C) directs companies to "submit a tariff to the commission, if no tariff exists, incorporating rates, terms and conditions for 211 service." This rule explicitly indicates the Commission did not expect the telecommunications companies to bear the costs of implementing 211, as it provided for rates to be charged.

Staff believes that it is reasonable for the Commission to act the same way again in this case and recommends the Commission approve the tariff sheets.

Should the Commission approve the tariff sheets, AT&T Missouri will be in compliance with the FCC's Sixth Report and Order because, as long as the carrier has performed the necessary switch programming so that it is prepared to commence service upon receiving an order for it, it has deployed, implemented, or otherwise made it available. (Tr. 191-92.) Likewise, AT&T Missouri has received the toll-free number for the area to be served for use in implementing 811, fulfilling the terms of paragraph 26 of the Sixth Report and Order. (Tr. 120-121.) As noted above, the Sixth Report and Order does not mandate that MOCS subscribe to 811 service; and MOCS has indicated that it would contact its designated representative at AT&T Missouri should it determine that 811 should be ordered. (Tr. 129-30.)

WHEREFORE, Staff provides this response for the Commission's consideration in this matter.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this January 17, 2007.

/s/ David A. Meyer